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CURRENT TOPICS

Retirement Benefits

THE more detailed statement about retirement benefits which was foreshadowed in our note on this subject last week has now been circulated to all members of The Law Society. The whole profession will be grateful to the Council of The Law Society for the work they have done on this subject and the statement, which still has to be put into legal form, should be carefully studied by all who contemplate making any further or different provision for their old age. It appears to us that the scheme which has been worked out has advantages over other schemes although the situation of each individual varies. For this reason we are particularly pleased that the Council have not been content only to produce a scheme, but they have also decided to set up an Advisory Service which will guide solicitors on the personal problems which arise from the new arrangements, particularly in connection with estate duty and existing insurance policies. The statement cannot easily be summarised and should be studied in full. In the meantime, we think that all solicitors could with advantage follow the PRESIDENT'S advice and " clock in " on the scheme by making an early initial contribution. The President points out that by so doing any such contribution would normally rank for tax relief at the rate or rates of income tax and sur-tax payable on the top " slice " of the solicitor's income ; that early membership earns the right for life to make contributions from time to time which will secure benefits on the original favourable terms ; and that the initial contribution carries no commitment in respect of further contributions.

Crown Estates

ON the coming into existence on 14th December, 1956, of the new board of trustee commissioners to administer the property formerly known as Crown Lands, and now under the Crown Estates Act known as Crown Estates, Sir MALCOLM TRUSTRAM EVE, Q.C., the chairman of the board, said : " We are, of course, a public authority, and subject both to parliamentary supervision and to Ministerial direction, but we are not a Government department and certainly not an organ of Government through which Government policy is to be exercised. The Lord Privy Seal, and in Scotland the Secretary of State for Scotland, will be ' our ' Ministers, but, subject to their direction, the commissioners are to manage the Crown Estates as the best reputable landowners, whether public or private, would manage their estates." Crown Lands had previously been the responsibility in Parliament of the Minister of Agriculture and the Secretary of State for Scotland. There are now eight commissioners who will work

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with the minimum of direction within a broad programme agreed with the Treasury. The value of the Crown Estates is estimated at over £50m. and they bring in a present gross revenue of more than £2,500,000 a year.

Moving from the Slums

ADVICE on the human problems likely to be faced by families moving to new homes from the slums is contained in a report by the Housing Management Sub-Committee of the Central Housing Advisory Committee, published on 11th December ("Moving from the Slums," H.M. Stationery Office, 1s. 9d.). The committee place the highest importance on local authorities giving families full and early information about what is to be done, why it is to be done, and when, and in using humane, experienced and well-qualified staff for both home visits and interviews at the office. In a section on provision of furniture it is stated that a recent survey of a new housing estate showed that the average outlay per family on new furniture was £111, and weekly payments of £3 to £5 are not unusual. The sub-committee say that people do not always realise the heavy burden of these weekly payments. Pressure from door-to-door salesmen may be great and not easily resisted by the housewife. If the signature of the husband as well as the wife were required on hire-purchase agreements, this, the sub-committee think, would at least give time for second thoughts. This is a legal requirement in New South Wales. They refer to the limited powers of local authorities under s. 72 of the Housing Act, 1936, to make arrangements for providing furniture to tenants and to s. 8 of the Housing Act, 1949, empowering local authorities to sell furniture to tenants, or supply it under hire-purchase agreements. If tenants could buy extra beds or bedding or chairs or linoleum from a local authority for a small weekly payment which could be collected with the rent, the sub-committee state that it would be a great blessing, and if the authorities bought from local stores there could be no objection that authorities were competing with local traders. For the poorest families collection and distribution of second-hand furniture and storage by local authorities are recommended. It is further recommended that full use should be made of statutory powers to pay compensation to displaced shop-keepers, and reference is made to the fixed compensation payable to tenants for more than a year (Slum Clearance (Compensation) Act, 1956) and the *ex gratia* payments to tenants with a shorter interest, under ss. 18 and 44 of the Housing Act, 1936.

Costs in China

IN his second article in the *Law Society's Gazette* (December) entitled "A Solicitor in China," Mr. ROBERT S. W. POLLARD referred among other matters to the remuneration of lawyers under the new order in that country. It appears that China is very short of lawyers, there being, for example, only twenty in private practice in Peking, to serve a population of some 3,000,000. If litigants cannot pay the full fee the State supplements their contribution, and all lawyers in practice receive a minimum monthly stipend. Perhaps Mr. Pollard will in some future article enlarge upon this system of subsidising the remuneration of lawyers and its effect on the degree of their independence. In this country we seem so far to have avoided encroachments on the independence of the profession which might have resulted from the introduction of legal aid, probably because the system is independently administered by the legal profession. Mr. Pollard is to be congratulated on the success of his visit in bringing back a mass of information on subjects of interest to his fellow solicitors from a country from which there has been all too little news in recent years. In this connection, his article entitled "Marriage and Divorce in China Now" in the November issue of the *Plain View* deserves special mention.

Rent Bill

IN a memorandum which the Council of the Chartered Auctioneers' and Estate Agents' Institute have submitted to the Minister of Housing and Local Government on the Rent Bill, the main objects of the Bill are welcomed but the suggestion is made that tenants whose dwellings are decontrolled under the Bill should be entitled to at least twelve months' notice if they are required to vacate the dwellings. The Bill at present provides for six months' notice. They state that this may be sufficient in some areas, but the housing situation varies considerably from place to place, and in some areas six months may allow insufficient time for those who need to find other accommodation. Among other suggestions made by the Chartered Institute are that a rent limit of twice the gross value will not produce an adequate rent in the case of some agricultural cottages with very small gross values; that a tenant under a lease for a term of years should be safe-guarded against an increase of rent during the remainder of the lease; that a landlord should, subject to proper conditions, have a right of entry to carry out suitable improvements; that rent tribunals should have no jurisdiction in the case of lettings within the Rent Restrictions Acts; and that there should be provisions for enabling the rate of interest to be raised on controlled mortgages. The Institute criticises the proposal that at the termination of a tenancy for more than twenty-one years Rent Acts protection in the form of a statutory tenancy should be given, notwithstanding the fact that the dwelling-house concerned is outside the revised rateable value limits. A proposal which would reverse the normal rule of English law in regard to the burden of proof, in cases where a notice of increase contains a false or misleading statement, is also criticised. The memorandum closes with a plea for clarity and simplicity in the forms of notice which will be prescribed in due course under the new Rent Act.

Annual Report on Bankruptcy

THE Report of the Inspector-General in Bankruptcy for the year ending the 31st December, 1955, published on the 12th December, 1956 (H.M. Stationery Office, 1s. 6d.), states that in 1955 there were 2,163 receiving and administration orders in the High Court and county courts, compared with 2,176 in 1954. In November and December the number of orders increased in comparison with the previous year. The estimated liabilities reached the highest figure since 1932. Estates in which trustees were released during the year numbered 1,306 official (1,865 in 1954) and 524 non-official (633 in 1954). Details of the final results of the trustees' administration are given in the Report. The Report also gives details of the 568 debtors' applications for discharge (440 in 1954), of the 82 prosecutions in respect of offences reported by the Official Receivers (95 in 1954), of the 306 deeds of arrangement registered (326 in 1954) and the 262 deeds in respect of which final accounts were rendered (324 in 1954). The main bankruptcies were: builders, 237, compared with 233 in 1954; farmers, 172, compared with 121 in 1954; and company directors, 97, compared with 84 in 1954.

SEASONABLE CAPRICE

A "BUTTERFLY MIND," flitting among the leaves of Halsbury's Laws of England, may light upon patches of attractive colour in some unlikely places. The General Index volume, for instance, under "Christmas Day." That no fewer than thirteen volumes of the second edition should carry references to something that for many legal purposes is not, so to speak, may seem surprising; but there are no doubt many who will need reminding that it is not possible to pawn the family silver on 25th December, or to play billiards in a licensed saloon, and, perhaps more important, that if Uncle Fred has been sentenced to a term of imprisonment which, after credit of such remission as he has earned, is due to expire on Christmas Day, one must prepare to have him home again on the 24th. But not for every purpose is the Feast of the Nativity *dies non*. No doubt, for instance, as was observed of Sunday in *Blackwell* v. *Blackwell* (1920), 89 L.J.P. 143, an order for restitution of conjugal rights may be as properly complied with on Christmas Day as on any other day.

Being one of the common-law holidays, Christmas Day does not depend on the Bank Holidays Act, 1871, or the Holidays Extension Act, 1875, for the legal sanction behind the rest from daily toil which it brings to most of us. It is not unnaturally one of the holy days commanded to be kept ("and none other") by an Act of 5 & 6 Edward VI which is still on the Statute Book. What the Bank Holidays Act does is impliedly to confirm that no person is compellable to pay money or to do any act on Christmas Day, and that anything required to be done on that day may adequately, in law, be done on the next. All legal systems are, of course, adept at this kind of fiction; 25th December is after all a sort of compromise date arrived at who knows by what process of orgiastic negotiation.

It is when the butterfly flutters to vol. 7 of Dowling's Practice Cases that he begins to savour the true significance of Christmas in legal practice. With what gasps of admiration must his contemporaries in 1838 have greeted the performance of the attorney acting for one *Wheeler* in his action against *Green* (p. 194). One can picture this prodigy of cunning cogitating his plan of campaign during the intervals of Christmas shopping. "A declaration should not only be filed," he reflects, "it should be filed at the precise tactical moment." So on Christmas Eve he puts in his declaration and serves the defendant with a notice to plead to it within four days.

Now s. 43 of the Common Law Procedure Act, 1833, had cut down the general observance of Holy Days in courts and offices, while leaving undisturbed the current practice of closing on (*inter alia*) the day of the Nativity of Our Lord and the three following days. Not until the 29th December, therefore, would the defendant be able to see at the court office the declaration to which he had to plead. By then, however, the four days allowed for pleading had gone by, and on that very morning, armed with a triumphant grin and a præcipe for entry of judgment in default, the plaintiff's attorney did not fail to present himself at the judgment seat.

The four days, argued his counsel in the subsequent proceedings to set aside the judgment, were to be reckoned as the 25th, 26th, 27th and 28th, for one only excluded Christmas Day, according to a rule of 1832, if it were the *last* of a particular number of days under consideration. A sweeter reasoning prevailed among the judges and found the indispensable technical support in the consideration that the statute directing the four-day holiday to be kept was subsequent to the rule relied on by the opportunist plaintiff.

A present-day emulator of these methods of litigation would have to contend with Ord. 64, r. 2, which excludes Sunday, Christmas Day and Good Friday from the computation of a limited time of less than six days.

J. F. J.

AFTER GOURLEY

THE very full discussion in these columns recently (*ante*, pp. 809, 828 and 849) of the effects of the *Gourley* case raises the question whether, and if so, how, its effects may be avoided in appropriate circumstances (which admittedly will be limited in application). Since there is a decision which seems to suggest such a method it may be of interest to those who followed the earlier articles to pursue it. It arises out of a decision with which the writer disagrees, in the sense that he finds it hard to follow the logic of the reasoning of the majority. The dissenting judgment of Morris, L.J., seems the clearest of all the judgments. The case is *Cullinane* v. *British Rema Co.* [1953] 3 W.L.R. 923.

The principles in *Cullinane's* case are very simple. *A* ordered from *B* a special type of crushing machine for pulverising clay costing several thousand pounds and he got *B* to give him a warranty as to the capacity or output in tons per day of clay of which the machine was capable. After the machine had been designed, constructed and erected it was found that the output did not come up to expectations, and though attempts were made to improve its working those efforts did not make enough difference to prevent a breach of warranty.

In the claim for damages it was pleaded that the assessment should be the capital cost of the machine (less its scrap value) plus loss of profits from the date when it should have started operating up to the date of the hearing. The trouble in this case started over the question of the calculation of those profits: should depreciation be allowed? If depreciation was to be allowed, then, over the total expected life of the machine, that depreciation would cover the capital cost. The majority of the Court of Appeal thought that that would mean that one was getting back the capital cost twice over, so they held that one must either claim the capital cost and nothing for loss of profit, or else one must claim the loss of profits over the total useful life of the machine, but not both.

If we accept this decision as it stands then the importance of *Gourley's* case is at once significant: one must frame one's claim in terms of capital value so as to avoid the income tax point. But, as the writer indicated, the decision itself seems challengeable on grounds of logic, a view supported by the dissenting judgment of Morris, L.J. The line of argument which the writer puts forward (though he makes no claim to be an economist) is as follows: suppose the machine cost £15,000 and has a useful life of fifteen years, and suppose the gross annual takings are £3,000, of which £1,000 represents working costs, £1,000 depreciation of capital assets (the machine) and £1,000 net profits. Now we may take two

different instances when the breach of contract is remedied; first, suppose it be remedied straight away: the manufacturer acknowledges that his engineers have made a mistake and he repays the £15,000. Then, of course, there will be no claim for loss of profits since you have your capital returned and can re-invest it. Now suppose the claim dragged on for fifteen years (and suppose the Limitation Acts were not pleaded) and the claim is settled then. In that case you claim £30,000, being the capital lost and the profits lost. The misapprehension which the Court of Appeal seems to have made arises from the assumption that in allowing for depreciation in arriving at your profit you are getting the capital back and so you get your capital twice, once in the claim for the value of the machine and once in your loss of profits claim. The answer to this is surely that your profit is really £2,000 per annum if depreciation were ignored, and in any event you do expect at the end of the fifteen years to have replaced your capital equipment out of profits (i.e., that part of profits described as depreciation which notionally, if not actually, is put to reserve for the purpose of replacing equipment). So you ought to have £30,000 at the end of the fifteen years, representing the replacement of your capital equipment (£15,000) and your net profit for the fifteen years, out of which you have lived. The alternative form of the claim for profits only should include the amount set down as depreciation, which, making the figure for profit £2,000 per annum, would still come to £30,000, but would all be subject to tax under *Gourley's* decision.

To go back to the *Cullinane* case itself, what was in fact claimed was the loss of capital value plus three years' loss of net profits (deducting depreciation first), being the period from the date the machine should have commenced producing to the date of the hearing of the action. If that were claimable, as it is submitted it should have been, then *Gourley* cannot be avoided as to the loss of profits; but it shows that the form of the claim for damages is now very important in a case of that description. Unfortunately, one would need either to go to the House of Lords to get the decision upset, or else rely on one of the exceptions to *Young* v. *Bristol Aeroplane Co., Ltd.* [1944] K.B. 718.

Let this be added: the interpretation of the majority opinion here given is based on the fact that they disallowed the claim for loss of profits. In fact the Master of the Rolls said that if a claim were based on loss of profits then "depreciation would have nothing to do with it." If that means that gross profit without any deduction for depreciation could be claimed we should not disagree, but that does not seem a sufficient reason for disallowing all claims for loss of profit.

Finally there is the point that in the hypothetical example here used it has been assumed that the loss of profits over the useful life of the machine is the same as the capital cost. That is unlikely, and depends on the type of business. It is just possible in some cases that a claim for loss of profit less income tax would be more than the capital cost where a machine has a long life and high output.

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"The thing we particularly noticed was that the character of all our conveyancing work was completely altering. It was not due to legislation or any deliberate acts of legal reform. It was simply due to social change. The old art of conveyancing as I knew it when I was a boy, when one pursued fascinating portions, terms and jointure rent-charges through the jungle of a settlement created by some noble lord—all this was disappearing. Abstracts had turned into a dull alternation of purchases, mortgages and deaths. I very soon came to realise that any man of normal education with a lively mind and a precise eye for detail could handle conveyancing, not merely as well as I could, but rather better. My professional interest in the work—this was, of course, before I gave up being a solicitor in disgust and went to the Bar—tended to preoccupy me with irrelevant side issues and I found that my juniors were dealing with their conveyancing work with much more satisfaction to their clients than I was. They were never late in completing a purchase so that the client's wife had to cancel the moving van and postpone the children's visit to their aunt. They started preparing their completion statements at the beginning of the transaction instead of just before completion day. They appreciated that the money side of a conveyance and the accuracy of the plan was far more important than the verbiage of the abstract.

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THE MORTGAGEE'S RIGHT TO POSSESSION

THE decision of Upjohn, J., in *Robertson* v. *Cilia* [1956] 1 W.L.R. 1502; *ante*, p. 916, effects, as the learned judge himself acknowledged, an important inroad into what is believed to be a frequent practice in the Chancery Division of adjourning applications by mortgagees for possession on terms that the mortgagor pays off all arrears by instalments and continues to pay future instalments punctually as and when they fall due.

The relevant rules

Until the alteration of the Rules of the Supreme Court in 1936, a mortgagee was entitled as of right to enforce his security by pursuing the common-law remedy of obtaining possession of the mortgaged property. The order for possession was obtainable by means of the ordinary procedure under R.S.C., Ord. 14, and could be enforced without any control being exercised by a court of equity. In 1936, it was provided by R.S.C., Ord. 5, r. 5A (*inter alia*), that all matters shall be assigned to the Chancery Division in which there is a claim for possession of property forming a security for payment to the plaintiff of any principal money or interest, and it was further provided by R.S.C., Ord. 55, r. 5A, that—

> "Any mortgagee or mortgagor, whether legal or equitable . . . may take out as of course an originating summons, returnable in the chambers of a judge of the Chancery Division, for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require."

The nature of the relief specified in the rule includes—

> "Payment of moneys secured by the mortgage or charge, sale, foreclosure, delivery of possession by the mortgagor, whether before or after foreclosure, redemption, reconveyance, delivery of possession by the mortgagee."

Under directions given by the judges in the Chancery Division to the masters and made shortly after the amendments referred to above, there is a direction as follows:—

> "When possession is sought and the defendant is in arrear with any instalment due under the mortgage or charge and the master is of opinion that the defendant ought to be given an opportunity to pay off the arrears, the master may adjourn the summons on such terms as he thinks fit, and if the defendant is in default of appearance direct the plaintiff's solicitor to communicate such terms to the defendant by letter."

The directions then continue—

> ". . . A conditional order for possession should not be made save under exceptional circumstances."

As a result of the amended rules and the judges' directions, it would seem that proceedings for possession by mortgagees were intended to be put upon the same footing as purely equitable remedies and to become fully subject to the incidents of equitable jurisdiction. In practice, the court has adjourned the hearing of mortgage possession cases under the inherent power vested in it by R.S.C., Ord. 36, r. 34, to adjourn a trial for such time and to such place, and upon such terms, if any, as it shall think fit, if it is considered "expedient for the interests of justice."

Extent of power to adjourn

In *Hinckley and South Leicestershire Permanent Benefit Building Society* v. *Freeman* [1941] 1 Ch. 32, the master adjourned a summons taken out by the building society for three months, but gave the society liberty to apply before that date in the event of the current instalments payable under the mortgage not being paid. The matter was adjourned into court at the instance of the society upon the ground that the master had no power to make such an order, and that the only order which the master, or even the court, had power to make was an order for possession. It was further contended that the judges' direction given under R.S.C., Ord. 55, r. 5A, was *ultra vires*. After reviewing the history of the action for possession by mortgagees, Farwell, J., said:—

> "However, if the plaintiff proves that he is in fact in the position of a mortgagee who is entitled to possession and is entitled to his order, of course he will get possession, and there is nothing in the rules, I think, which can alter the right of the mortgagee which he had before the passing of the Judicature Act, 1875, which he had after the passing of that Act, and which, in my judgment, he still has, to possession in proper circumstances."

Having said this, he continued:—

> "The proposition that this court has not power to adjourn any matter on any proper ground is new to me. No doubt the court cannot postpone the hearing of a matter indefinitely, because, if a court did so, it might thereby lead to defeating justice altogether, and a mere arbitrary refusal to hear a particular case is not a matter which, when dealing with litigation, would ever become a recognised thing. I cannot conceive any judge taking a course of that sort. However, to say that the court has not always an inherent power to direct that any matter which comes before it should stand over for a period if the court thinks that that is the proper way to deal with the matter is a proposition entirely new to me."

He concluded that there was nothing whatever which was in any way *ultra vires* or improper in the direction which the master gave in that case, and observed that there was nothing in the Annual Practice which directed a master in every case of this sort peremptorily to adjourn the matter for three months; it merely enabled him to do so if, in all the circumstances, he thought that it was the proper way of doing justice between the parties. In the event, the judge referred the matter back to chambers with a direction that, if the master was satisfied that none of the payments had been made during the past three months, he should make an order for possession.

different instances when the breach of contract is remedied; first, suppose it be remedied straight away: the manufacturer acknowledges that his engineers have made a mistake and he repays the £15,000. Then, of course, there will be no claim for loss of profits since you have your capital returned and can re-invest it. Now suppose the claim dragged on for fifteen years (and suppose the Limitation Acts were not pleaded) and the claim is settled then. In that case you claim £30,000, being the capital lost and the profits lost. The misapprehension which the Court of Appeal seems to have made arises from the assumption that in allowing for depreciation in arriving at your profit you are getting the capital back and so you get your capital twice, once in the claim for the value of the machine and once in your loss of profits claim. The answer to this is surely that your profit is really £2,000 per annum if depreciation were ignored, and in any event you do expect at the end of the fifteen years to have replaced your capital equipment out of profits (i.e., that part of profits described as depreciation which notionally, if not actually, is put to reserve for the purpose of replacing equipment). So you ought to have £30,000 at the end of the fifteen years, representing the replacement of your capital equipment (£15,000) and your net profit for the fifteen years, out of which you have lived. The alternative form of the claim for profits only should include the amount set down as depreciation, which, making the figure for profit £2,000 per annum, would still come to £30,000, but would all be subject to tax under *Gourley's* decision.

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The Lord Chief Justice looked at his watch as he put on his overcoat. "I shall just have time to catch my plane at London Airport; that is, if it isn't booked up with Masters of Law flying home after a week-end in England. They are all so confoundedly rich nowadays." E. A. Williams.

THE MORTGAGEE'S RIGHT TO POSSESSION

The decision of Upjohn, J., in *Robertson* v. *Cilia* [1956] 1 W.L.R. 1502; *ante*, p. 916, effects, as the learned judge himself acknowledged, an important inroad into what is believed to be a frequent practice in the Chancery Division of adjourning applications by mortgagees for possession on terms that the mortgagor pays off all arrears by instalments and continues to pay future instalments punctually as and when they fall due.

The relevant rules

Until the alteration of the Rules of the Supreme Court in 1936, a mortgagee was entitled as of right to enforce his security by pursuing the common-law remedy of obtaining possession of the mortgaged property. The order for possession was obtainable by means of the ordinary procedure under R.S.C., Ord. 14, and could be enforced without any control being exercised by a court of equity. In 1936, it was provided by R.S.C., Ord. 5, r. 5A (*inter alia*), that all matters shall be assigned to the Chancery Division in which there is a claim for possession of property forming a security for payment to the plaintiff of any principal money or interest, and it was further provided by R.S.C., Ord. 55, r. 5A, that—

> "Any mortgagee or mortgagor, whether legal or equitable . . . may take out as of course an originating summons, returnable in the chambers of a judge of the Chancery Division, for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require."

The nature of the relief specified in the rule includes—

> "Payment of moneys secured by the mortgage or charge, sale, foreclosure, delivery of possession by the mortgagor, whether before or after foreclosure, redemption, reconveyance, delivery of possession by the mortgagee."

Under directions given by the judges in the Chancery Division to the masters and made shortly after the amendments referred to above, there is a direction as follows:—

> "When possession is sought and the defendant is in arrear with any instalment due under the mortgage or charge and the master is of opinion that the defendant ought to be given an opportunity to pay off the arrears, the master may adjourn the summons on such terms as he thinks fit, and if the defendant is in default of appearance direct the plaintiff's solicitor to communicate such terms to the defendant by letter."

The directions then continue—

> ". . . A conditional order for possession should not be made save under exceptional circumstances."

As a result of the amended rules and the judges' directions, it would seem that proceedings for possession by mortgagees were intended to be put upon the same footing as purely equitable remedies and to become fully subject to the incidents of equitable jurisdiction. In practice, the court has adjourned the hearing of mortgage possession cases under the inherent power vested in it by R.S.C., Ord. 36, r. 34, to adjourn a trial for such time and to such place, and upon such terms, if any, as it shall think fit, if it is considered "expedient for the interests of justice."

Extent of power to adjourn

In *Hinckley and South Leicestershire Permanent Benefit Building Society* v. *Freeman* [1941] 1 Ch. 32, the master adjourned a summons taken out by the building society for three months, but gave the society liberty to apply before that date in the event of the current instalments payable under the mortgage not being paid. The matter was adjourned into court at the instance of the society upon the ground that the master had no power to make such an order, and that the only order which the master, or even the court, had power to make was an order for possession. It was further contended that the judges' direction given under R.S.C., Ord. 55, r. 5A, was *ultra vires*. After reviewing the history of the action for possession by mortgagees, Farwell, J., said:—

> "However, if the plaintiff proves that he is in fact in the position of a mortgagee who is entitled to possession and is entitled to his order, of course he will get possession, and there is nothing in the rules, I think, which can alter the right of the mortgagee which he had before the passing of the Judicature Act, 1875, which he had after the passing of that Act, and which, in my judgment, he still has, to possession in proper circumstances."

Having said this, he continued:—

> "The proposition that this court has not power to adjourn any matter on any proper ground is new to me. No doubt the court cannot postpone the hearing of a matter indefinitely, because, if a court did so, it might thereby lead to defeating justice altogether, and a mere arbitrary refusal to hear a particular case is not a matter which, when dealing with litigation, would ever become a recognised thing. I cannot conceive any judge taking a course of that sort. However, to say that the court has not always an inherent power to direct that any matter which comes before it should stand over for a period if the court thinks that that is the proper way to deal with the matter is a proposition entirely new to me."

He concluded that there was nothing whatever which was in any way *ultra vires* or improper in the direction which the master gave in that case, and observed that there was nothing in the Annual Practice which directed a master in every case of this sort peremptorily to adjourn the matter for three months; it merely enabled him to do so if, in all the circumstances, he thought that it was the proper way of doing justice between the parties. In the event, the judge referred the matter back to chambers with a direction that, if the master was satisfied that none of the payments had been made during the past three months, he should make an order for possession.

The new decision

Hinckley, etc., Building Society v. *Freeman* has frequently been cited with approval by judges in other cases, and the decision has been generally understood to permit adjournment for a limited but not an indefinite period of time. The decision of Upjohn, J., in *Robertson* v. *Cilia* has, however, clarified the position by drawing a clear distinction between the substantive rights of the mortgagee and the purely procedural nature of the Rules of the Supreme Court. *Freeman's* case was unsatisfactory in that it dealt only with the limited problem of a single adjournment; it did not examine the position which would have arisen in the event that the mortgagor complied with the terms of the adjournment by paying instalments punctually as they fell due. Thus the " purpose " for which an adjournment should be granted was never in issue.

In *Robertson* v. *Cilia*, the mortgagor charged freehold premises by way of legal mortgage to secure repayment of the principal sum and interest. The legal charge contained the usual covenant for repayment and also contained a provision that, if the mortgagor should perform and observe all the covenants and conditions (other than the covenant for repayment of principal), the mortgagee would accept payment of principal and interest by instalments. The mortgagor fell into arrear with payment of his instalments and the mortgagee gave a notice calling in the mortgage money. Proceedings for possession were instituted and the summons was adjourned to the judge in chambers. At the hearing in chambers the mortgagor offered to pay up all arrears, and on terms that he paid punctually all future instalments, and in addition £5 a month on account of arrears until all was paid off, the judge stood the matter over generally with liberty to retore on default by the mortgagor. The summons was subsequently adjourned into court for argument to enable the mortgagee to challenge the order. Between the date of the hearing in chambers and the date of the hearing in court the mortgagor paid off all arrears of instalments. Counsel for the mortgagee submitted that the court had no power to stand over the summons generally, even on terms, but conceded that the court had power to adjourn the case for a fixed period of two or three months if the mortgagor wanted time to make arrangements to discharge the whole amount due under the security.

Upjohn, J., cited and approved the passages of Farwell, J.'s judgment in *Freeman's* case set out above. In reply to a point raised on behalf of the mortgagor that if it had been proved to the judge in *Freeman's* case that the instalments had been paid punctually he would have granted a further adjournment, Upjohn, J., said :—

> " With all respect to that argument, I do not think that that implication can be extracted from the judgment. He was concerned, and concerned solely, with the suggestion that there was no power in the court to adjourn at all. He never considered, for it was not before him, what would be the position if the plaintiff was still pressing for possession although it was proved that all arrears of instalments had been paid. That is the problem which I have to consider."

The learned judge, having decided that the mortgagee was entitled to possession, concluded :—

> " It seems to me clear, having heard argument on it, that I have no right to stand the matter over generally without the consent of the plaintiff, although all arrears of instalments have been paid up, even on terms as to punctual payment in the future. That is so for two reasons. First, if I were to do so, I should be forcing the parties to an agreement which they have never made, namely, to compel the plaintiff to accept repayment by instalments although the defendant's right to do so has long since lapsed. The judges' direction of 1936 was never intended to give the court power to do that, and if that had been the intention the argument that the direction was *ultra vires* would have succeeded. Second, if I were to do so I should, so it seems to me, be postponing indefinitely the right of the plaintiff to have her case for possession tried, on terms which I have no power to impose. That would amount to an arbitrary refusal to hear this case."

On the issue of the length of the adjournment, the learned judge decided that he was not entitled to give consideration to claims of " greater hardship," because Parliament had not thought right to give the court power to interfere between mortgagor and mortgagee on that ground; he had only power to adjourn the matter for a reasonable period to give the mortgagor an opportunity of making an offer acceptable to the mortgagee and, if necessary, of trying to find means of discharging the loan altogether.

Conclusions

As a result of the decision in *Robertson* v. *Cilia*, the following conclusions may be drawn :—

1. The purely procedural nature of the power of adjournment has been emphasised and Upjohn, J., has indicated that R.S.C., Ord. 36, r. 34, must not be used in such a manner as to defeat the substantive rights of the parties.

2. The decision of Farwell, J., in *Hinckley, etc.* v. *Freeman* must be understood as relating to the case of a single adjournment for a limited period. It was in fact argued upon that basis by counsel for the Crown.

3. The judges' directions under R.S.C., Ord. 55, r. 5A, are unobjectionable in so far as they draw the master's attention to his power of adjournment in appropriate circumstances, but they are *ultra vires* to the extent that they indicate that an adjournment may be granted for the purpose of paying off " arrears " as opposed to discharging the mortgage and to the extent that it is suggested that the terms which the master can impose upon an adjournment may alter the substantive rights of the parties.

4. Upjohn, J., has mentioned some of the matters which it is proper for the court to consider in fixing the period within which possession must be given, but the matters mentioned are not necessarily comprehensive. They do not, however, include the issue of " greater hardship."

5. While the mortgagee's right to claim possession of the premises comprised in a legal mortgage usually arises before the power of sale has arisen and become exercisable, the decision in *Robertson* v. *Cilia* was specifically confined to a claim for possession after that event. No opinion was expressed in relation to the mortgagee's right to possession in other circumstances.

G. E. H.

Mr. W. E. Brown, clerk to Knaresborough Urban District Council, has been appointed clerk to Melton Mowbray Urban District Council, Leicestershire. He will take up that post in March, 1957.

Mr. H. Howard Karslake, F.R.I.C.S., F.R.V.A., F.I.Hsg., a member of the Council of the Rating and Valuation Association, has been elected chairman of the Rating Diploma Section of the Royal Institution of Chartered Surveyors.

Landlord and Tenant Notebook

OBSOLETE OR USELESS COVENANTS

Driscoll v. *Church Commissioners for England* [1956] 3 W.L.R. 996 (C.A.); *ante*, p. 872, decided a number of points on the effect of the provisions of the Law of Property Act, 1925, s. 84, relating to the discharge or modification, *in invitum*, of restrictive covenants in long leases. It was held that the issue of a writ for recovery of land on the ground of forfeiture did not destroy the covenantor's right to apply; that the Lands Tribunal, which now hears applications, has a discretionary power; and that a covenant limiting user to private dwelling-house user had not become obsolete merely because neighbouring large houses originally in single occupation had been converted into flats and guest houses.

The facts revealed just the sort of situation which the section was designed to deal with. A number of large houses, ten-roomed or even twenty-roomed, had been built at Croydon between 1865 and 1870 and let for periods of ninety-nine years (except one of those concerned—which had been let for 999 years). Every lease contained a covenant by the lessee not to use the premises for any trade or business or otherwise than as a private dwelling-house, save with the previous written consent of the lessor. And, as Denning, L.J., put it, "there is no doubt but that at the date when the covenant was made it was contemplated that those houses would be occupied by people of wealth and position with sufficient servants to keep such large houses going for use for a single family."

By 1949 the respondent landlords had consented to many neighbouring houses being used as guest houses or converted into flats. And in that year the appellant tenant, who held the leases of nine of the houses, asked them for their consent (retrospective in some cases at least) to their use as hostels and residential clubs for people from overseas. They offered to consent on stringent conditions: a resident matron for each house, proper furniture, outward appearance of private residence to be preserved, number of occupants restricted, etc.; and the licence was to be revocable at their pleasure and to be personal to the tenant. Evidence was later on called to show that they were dissatisfied with the way in which he had been running his hostels; also that he was much in default with regard to repairs; and apparently there was too a further condition by which dilapidations were to be made good within twelve months.

The tenant then made application to the Lands Tribunal under the Law of Property Act, 1925, s. 84, which reads (as amended by the Landlord and Tenant Act, 1954, s. 51 (1)): "The authority [since the passing of the Lands Tribunal Act, 1949, the Lands Tribunal] . . . shall . . . have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction . . . on being satisfied (*a*) that by reason of changes in the character of the neighbourhood or other circumstances of the case which the authority may deem material, the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user"; and by subs. (12), "Where a term of more than forty years is created in land . . . this section shall, after the expiration of twenty-five years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold."

The application was made on 8th November, 1949, but not heard till 5th May, 1956. And in the meantime the landlords issued writs for possession on the ground of forfeiture—unauthorised user and disrepair—as regards six of the houses on 7th April, 1952; the tenant counter-claimed for relief. Then, on 5th May, 1956, aforesaid, the Lands Tribunal refused the application. Next, on 31st July, 1956, Pearson, J., gave judgment in the forfeiture actions: relief subject to certain repairs being done, and tenant might disregard the covenants as to user pending the hearing of his appeal against the Lands Tribunal's refusal.

The forfeiture point

The respondents contended that the issue of the writ on 7th April, 1952, had determined the tenancy, so that on 7th April the appellant had had no lease or interest entitling him to apply under s. 84, except the leases not sought to be forfeited. It is rather late in the day to raise this point. The argument is plausible, and the position may be illogical; but in *Serjeant* v. *Nash, Field & Co.* [1903] 2 K.B. 304 (C.A.), Henn Collins, M.R., holding that the issue of a writ evidenced election, said: "It is true that the rights of the parties were not determined by the issue of the writ, and could not be finally determined until the result of the action was known; but that does not affect the fact of the election of the lessor to treat the lease as at an end, subject to the proof that there has been a breach of covenant which entitled her so to do." The cause of forfeiture in that case was unauthorised alienation, at that time irrelievable; but the position was more fully worked out a few years later in *Dendy* v. *Evans* [1910] 1 K.B. 263 (C.A.), a disrepair case, by Cozens-Hardy, M.R., who demonstrated that the effect of relief was to get rid of the right of forfeiture, the result being the same as if no writ had ever been issued. In *Driscoll* v. *Church Commissioners for England*, as we have seen, relief was granted conditionally, after the hearing by the Lands Tribunal but before the hearing by the Court of Appeal. Denning, L.J., said that the covenant did not, as a result of the election by the landlord, cease to be potentially good; and no doubt it would be rather specious to suggest that the Law of Property Act, 1925, s. 84, dealt with restrictions arising under covenants which were actually, and not merely potentially, good.

Tribunal's discretion

The court declined to accede to an argument that the words "the authority shall have power by order wholly or partially to discharge or modify any such restriction" imposed a duty to modify in some way or other, leaving it a discretion as to the precise way.

The findings

The tenant invoked both limbs of the subsection, alleging that (i) by reason of changes, etc., the restriction ought to be deemed obsolete and/or that (ii) its continued existence impeded reasonable user without securing practical benefits, etc.

The president of the Tribunal found that there had been changes, but that the area was still essentially residential,

the changes effecting changes in the size of private residences, and the owners and lessee were entitled to the amenities they had enjoyed; that one of those amenities was the covenant under review; that that provision was not obsolete; that if amenities were to be preserved the Church Commissioners must retain control to be exercised by giving or withholding consent, subject to the proposed reasonable conditions; that the objection constituted by the manner in which the clubs were conducted, and the dilapidations, was valid; that the Commissioners were not enforcing the restriction so as to impede reasonable user; that the applicant had failed to satisfy him on any of the grounds set out in s. 84.

In his judgment, Denning, L.J., recalled that the Church Commissioners had not turned the applicant's request down altogether, and, dealing with the decision itself, said (i) that while the covenant was obsolete in one sense, as the houses could no longer be used as single private dwelling-houses, it enabled the Commissioners to keep the area residential and "as long as the landlord uses this covenant reasonably for a useful purpose, then, even if that purpose goes beyond what was contemplated ninety years ago, the covenant is not obsolete." And, in considering (ii) whether the covenant still served a useful purpose, "I think it very important to see how the landlord, or whoever is entitled to the benefit of the covenant, has used it in the past and seeks to use it in the present. If he uses it reasonably, not in his own selfish interests but in the interests of the people of the neighbourhood . . . then it will serve a useful purpose."

On (i), Hodson, L.J., referred to the attempts made in *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application* [1956] 1 Q.B. 261 to define "obsolete," and to Romer, L.J.'s conclusion that a covenant was not obsolete if its object was still capable of fulfilment; regretted the absence of more information; but considered that there was evidence to support the finding; and on (ii), said that there was no ground on which the conclusion could be interfered with.

Morris, L.J., considered the applicant's purpose laudable, but thought that the finding that the area was still essentially a residential area—while the tenant sought to carry on a business—warranted the conclusion that the restriction was not obsolete, and the Church Commissioners' undertaking (the details of which are not given) made it difficult to submit that the continued existence of the restrictions impeded the reasonable user of the land.

Comment

It is, I think, rather perplexing to find so much attention paid, in a Law of Property Act, 1925, s. 84, case, to the personal characteristics and the conduct of the parties. Every now and again one gets the impression that the report is dealing with an issue of reasonable or unreasonable refusal of consent provided for in a covenant, to which, in my submission, quite different considerations are pertinent.

"O, it is excellent to have a giant's strength; but it is tyrannous to use it like a giant." Granted that the respondents are the last persons likely to embark upon tyranny, what the subsection deals with is the nature of a restriction and not the nature of the person for the time being entitled to impose it. A revolver is a lethal weapon whether its owner is likely to use it otherwise than in self-defence or not; and, with respect, how a covenant has been used and is used by some individuals is hardly a guide to whether it serves a useful purpose. In this respect, the decision appears to disregard some more ancient law, first stated in *Spencer's Case* (1583), 5 Co. Rep. 16*a*, and now to be found in a different part of the Law of Property Act, 1925, namely, in s. 78: it would not be "tyrannous," or unreasonable on the part of, the Church Commissioners to sell the reversions, and they do sell reversions; does the new authority mean that if that were done the tenant might some day make a fresh application, admitting that his neighbours were still xenophobic, anxious to have outward appearances preserved, etc., but relying on allegations that the lessor's successor in title was not using his powers reasonably but in his own selfish interests: ergo, it was obsolete and served no useful purpose?

R. B.

A CHRISTMAS STORY

MARLEY was dead, to begin with. There was no doubt about that. Old Marley was as dead as a doornail. And Scrooge pondered the matter deeply. Death had for forty years been one of his best clients, especially at this season. One man died, and his relatives, huddled round the grave as the last rites were performed, seemed to catch an epidemic of death. Now Marley was dead, but it was different this time. Scrooge was the sole partner now, and with a slight shiver he realised he had passed over from the 8 per cent. class to the 92 per cent.—not, of course, that there was any slip in his books, so far as he knew.

Undoubtedly the first problem would be the Inland Revenue affidavit. What would Marley be worth? And what did it matter, anyway, for Marley's closest relatives were only first and second cousins, and Marley himself hardly knew if all his beneficiaries were living? Scrooge realised he would have to advertise for creditors and claimants in the *Gazette* and the local, and, too, in the *Tales of the Globe*, and when that last advertisement appeared people would write in from all over the country with names of Marley, Marney, Marles, Marling, and anything even slightly similar, saying that owing to the similarity there must be some sort of relationship and would he please send the money by cheque payable to bearer.

Well, what was he worth? Most of his property was either in tenant-occupied property or out on mortgage. Fifteen years' purchase was fair for duty purposes. He would sell when the property came vacant. Scrooge remembered that the tenants paid their own rates, and he wondered if Mrs. Bell and Mrs. Jordan were contractual or statutory tenants. Their husbands had both been contractual tenants but had died some fifteen or twenty years ago. If Marley had ever given them notice to quit, he, Scrooge, could get possession on the deaths of the present tenants; otherwise their sons and daughters would claim the right to continue in occupation under s. 12 (1) (*g*). It would take a lot of research. Even before *Goody* v. *Baring* he had been at some pains to try to ascertain standard and recoverable rents; the complications of the Rent Acts, the singular unintelligence of the tenants of most of the 1914-controlled property, and their instinctive suspicion that they might be caught for something extra meant that even when he could believe what they told him he prayed that he would never have to testify before Mr. Justice Danckwerts. He would also have to be careful about easements to be preserved; he wondered if the Baldwin sisters had still owned the cottages in Linden Street on the 1st January, 1926, and if the yard in the back was therefore vested in the Public

Trustee (L.P.A., 1925, s. 39). Perhaps those cottages were the ones Marley had sold when the tenants had accepted £50 each to move out in 1947 (*Rajbenback* v. *Mamon* (1955), 99 SOL. J. 29).

Marley had done well there. He sold the properties at a good price, and the purchasers needed more money than the insurance company would advance. Marley had seen to it that they were told that if they had been his clients he could have advanced the difference on second mortgage. It was an easy way of obtaining the work both on that transaction and on the sale of their previous houses. Admittedly two local law societies felt that it was rather a fast one, but The Law Society's Professional Conduct Committee took no action.

Perhaps Marley's share in the business would be the most difficult figure to agree for duty. He would have to study s. 28 (1) of the 1954 Finance Act again to see if he could get a reduced rate on the office equipment. Scrooge smiled as he reflected that for once he would be happy to have a low estimate from the district valuer. It would probably shock Marley. At times Marley had a funny sense of values; as he had grown older he thought bungalows worth more and more, and had written down the value of houses according to the number of steps to them. He always managed to persuade himself that he was following his clients' instructions, and was proud of the fact that he saved them the professional valuers' fees. Scrooge wondered how much extra duty had thus been paid during the course of Marley's career, and in a quiet way marvelled how Marley had been carried safe through every little negligence, with the clients paying for every little correction.

But Scrooge was growing chill, and as he heard the church clock outside strike six he decided to have a quick look at the will before he went home. He got out his keys, and swung the heavy safe door open. In the drawer he found the sealed envelope in which he knew was Marley's final message. He read it through, noting the names of cousins and their bequests, and all the legal paraphernalia of predeceasing and accumulations. With a sudden dreadful shudder he came to the end; Marley, probably leaving umpteen lunatics and infants behind, had omitted the charging clause. And Scrooge knew then that it was time he retired.

N. P.

HERE AND THERE

TEETOTALLER'S WHISKEY

OF course, one knows that it is very naïve to expect human beings to behave as if they were all of a piece, each a consistent mechanism working, with greater or less efficiency, for an ordained purpose. But all the fun of being human lies precisely in the contradictions inherent in being human. "The honest thief, the tender murderer, the superstitious atheist," were setting intriguing problems in Browning's time, long before the crazy and the mixed-up were topics for the pontifications of sherry party psychiatrists. All the same, there is something rather pleasingly whimsical and unexpected in the teetotaller who invents and illegally exploits an economical method of manufacturing whiskey. It happened at Derby and the teetotal inventor was a railway fitter. Incidentally, one is happy to note this evidence of industry, ingenuity and sobriety among the employees of British Railways. An ingenious writer of fiction might treat his story in half a dozen different ways. It might be handled as an old-fashioned moral tale with a warning, or as an uproarious farce against a Midlands working-class background. It might be presented as a sort of scientific saga, a triumph of genius over adverse stars and lowly circumstances. Or it might be made into a straightforward tale for the schoolboy, to show him what he can do with the simplest appliances. It also has the elements of a medieval allegory of alchemy. Told in the plainest possible language, this is the story. The teetotal fitter, with only an elementary school education, had an inquiring mind and some laboratory equipment of the simple type which might be found in a school. With this he experimented for fifteen years and at last, one radiant day, he formed in his crucibles a successfully distilled whiskey. On impartial analysis, it was found to be the equivalent of a fairly good commercial whiskey but of higher proof. It cost 8s. a bottle to make. It was not quite the case of a magician invoking the unknown powers and suddenly overwhelmed by an immensely potent spirit emerging from a bottle. The teetotal fitter had, rather surprisingly, been studying whiskey-making by the methods made available to the inquiring mind by popular education, "books from the library which are obtainable by anybody." At Derby he pleaded guilty to summonses under the Customs and Excise Act for manufacturing spirits without a licence and for selling spirits on premises for which he did not hold a licence. He was fined £18. There are a variety of morals to be drawn from the story according to taste, that teetotallers should stick to teetotalism or that fitters should stick to fitting or that a little learning is a dangerous thing or that State interference stifles private initiative. But the moral the defendant has drawn is that now he had better concentrate on an idea for cellulose fibre.

TRUMPET VOLUNTARY

We have long been aware that words like "liberation," "peace," "democracy," "provocation," "aggression," "reactionary," "re-education," all have a decidedly specialised meaning in the vocabulary dominant in Eastern Europe and beyond. The proceedings in the leading case of the Five Hats were, you remember, a "provocation." Another word which is all too likely in the future to give trouble to the international lawyers is "volunteer." They would be much assisted if someone with a talent for definition would compile a short dictionary bringing out those rather unexpected nuances and overtones in ordinary words which are undetected by the Western ear, but clearly perceptible in the vast meditative spaces of the Steppes and the unmeasured dominions within the Great Wall. Save in the context of some *levée en masse* to defend the soil of a nation against an alien or a native tyranny (as in the case of the rush to the frontiers in the early days of the French Revolution or the rush to the barricades in Budapest in our own), one thinks of the volunteer as either a solitary individualist or a member of a small, dedicated group. One has to re-examine philosophies and philologies, not to mention legal conceptions, when talk starts going around of 50,000 or 250,000 volunteers burning to cross seas and continents to fight in a foreign quarrel. It is true that in the sixteenth and seventeenth centuries English brigades fought abroad against nations with whom England was technically at peace. (In his early days, General Monck

spent ten years fighting the Spaniards with a force of English volunteers in the Dutch service.) Far later than that, Swiss volunteers were fighting in other people's wars in every direction. But in modern times the conception of volunteers turning up in divisional strength armed to the back teeth has not been regarded as compatible with the neutrality of their country of origin, since a nation has been taken to violate its neutrality if it furnished troops and military supplies to a belligerent. On the other hand, no State was obliged to prevent its individual subjects from enlisting in belligerent forces. But if 50,000 or more Russians or Chinese were allowed to leave their respective countries complete with arms, ammunition, tanks and aircraft, it is hard to see how (to use a decadent capitalist-imperialist expression) they could be said to retain their "amateur status." One seems to remember that Hitler's technique was to allow German volunteers to go abroad as "tourists." As to arms, no doubt the most up-to-date device would be to send them ahead as "luggage in advance." In the matter of volunteers, one helpful contribution to the discussion has been made by the inmates of Illinois State Prison, who in their newspaper suggest that the United Nations' army should be enlisted from convicts—true volunteers in every sense. Convicts of the world unite; you have nothing to lose but your chains. Maybe those volunteers from the east also have a notion that they would like to see what abroad looks like since there is so little other opportunity.

RICHARD ROE.

TALKING "SHOP"

"FAVOURED WITH YOUR INSTRUCTIONS"

After the pseudo-Irish and anonymous burlesque "A Strike amongst Poets," and with grateful acknowledgments to this source.

The villainy you teach me I will execute, and it shall go hard but I will better the instruction.

The Merchant of Venice, III, i, 76.

In his chambers, weak and dying
While the Norman Baron lay,
Loud without his clerk was crying
"What instructions for to-day?"

Know you why the ploughman, fretting,
Homeward plods his weary way?
Sure, his lawyer's after getting
More "instructions"—plus the pay.

See! The Hesperus is swinging
Idle in the wintry bay,
And the skipper's daughter's singing
In a well instructed way.

Why's the minstrel boy not girded,
Harp and sword for the affray?
He awaits some plainly worded
Crisp "instructions" for his lay.

E'en the boy upon the burning
Deck has got a word to say,
Something rather warm concerning
No instructions—so must stay.

See, too, the forsaken merman
Where the wild white horses play:
Margaret has left with her man
Plain instructions—"gone away."

Who is this? Lord Ullin's daughter
Waits till father names the day;
Not for her the stormy water—
Firm "instructions" always pay.

In the garden Maud is pacing:
Black bat night has flown away,
Yet the wretched girl's grimacing—
Needs instruction, I daresay.

Hear Poe's sable Raven croaking
More like jackdaw, than like jay?
Seems the poor old bird is choking
On instructions gone astray.

Don't look now, but there's King Arthur
And he's turning rather grey;
Lancelot now is quite a martyr
To "instructions," so they say.

Who's the lady by the river
(Reckon it's the river Wey)?*
Someone surely should deliver
Clear instructions, yea or nay.

Lives of great men all remind us
We can earn as much as they.
Why advise when that might bind us?
What are your *instructions*, pray?

Envoi

The shades of night were falling fast—
A shade the faster when there passed
A youth, who bore, come snow or ice,
A banner with the strange device:
Instructions!

"ESCROW"

* Traditionally associated at Guildford, Surrey, with Elaine, the Lily Maid of Astolat, and at a further remove with The Lady of Shalott.

Country Practice

APPRECIATING THE SITUATION

IN the winter of 1939–40 I was taught how to "appreciate the situation." My commanding officer, not relishing the thought of having a lawyer in the ranks, had sent me off to an O.C.T.U., where I met eight or nine other solicitors whose respective C.O.s must have had similar views. From time to time we grouped ourselves into a section, syndicate or squad, as military exigencies and the permanent staff instructors dictated. As fighting material, we may not have caused Hitler much alarm, but for tactical appreciations we were hard to beat. I have lost touch with the others, but one changed over and became a barrister, another is an M.P., and a third writes for the SOLICITORS' JOURNAL; so you can tell from that how good we were.

A military appreciation involves the collating of information, its presentation in simple logical sequence, and the evolution of a plan. In a skeleton form, it looked something like this:

Information (*Enemy*): One platoon of Germans in position along Blackacre Ridge. (*Own troops*): One infantry company, no supporting arms. *Courses open to the enemy:* He can go backwards, forwards, or stay where he is. *Courses open to us:* So can we. *Plan:* Attack!

In addition, the weather had to be mentioned, as well as morale and a few other details. The important thing was that potential officers had to undergo a mental contortion before issuing orders and advancing upon the enemy.

To-day, the mental process can still be carried out, even in a country office. It is something like this:

Information (*Government*): The Government is lightly entrenched at Westminster. Owing to unforeseen circumstances (or foreseen, if you are as loyal as all that) the Government has restricted petrol to such extent that the partners' cars will all run dry at the present rate of travelling.

Information (*own troops*): Three partners, car-borne, having homes three, four and seven miles distant respectively from the principal place of business. Supporting troops: one managing clerk, living just round the corner, but possessing a car, and one cashier with an autocycle. Junior clerks and typists, unmechanised, but one with a provisional licence.

Weather: Sure to be awful; motor scooters not favoured, even if available.

Morale: Government, doubtful, but can be given the benefit of the doubt. Senior partner, unaffected; when his petrol ration is expended he will either stay at home or borrow his wife's horse. Second partner, uncertain; he must either let his wife use the car as before or do the shopping himself. Junior partner (Mr. Highfield), grimly determined, despite the decrepitude of his 1936 car.

Courses open to the Government:

(*a*) Reopen the branch railway line, closed to passenger traffic four years ago.

(*b*) Provide extra petrol on the same scale applicable to farmers attending market once a week. (*N.B.*—Farmers need attend market only once a month.)

(*c*) Give way to the pressure group pressing hardest.

Courses open to own troops:

(*a*) Walk.
(*b*) Cycle.
(*c*) Hope for the best.
(*d*) Stay at home.

At the moment of writing, tanks are still awash with basic and supplementary. The bus which passes through my village at 8.15 a.m. has my patronage; no further bus appears until 10.26. All household clients in need of legal assistance have already been visited and battened down for the duration; but in future urgent cases must take their chance of my thumbing a lift with the veterinary surgeon, whose allocation is second only to that of the district nurse. Already ear-marked is half a week's ration to visit the county court, fifteen miles away and on no direct bus route. The market day office in the next town still has to be manned, and this means either doing without lunch or using up more petrol. If I am to get to assizes in the interests of poor Mr. *X*, I shall have to put out of my mind the jolly possibilities of a trip to London, involving a drive to the nearest main line station twenty-five miles away. The funerals at which the family solicitor is *expected* will need careful liaison with other mourners. Answers to requisitions stating that "an inspection will show" will be passed on to the client for action, and the estate agency work respectably carried on in country offices will certainly contract. But, in a spirit of grim determination, we shall weather the storm.

Anyhow, let us hope for the best. "HIGHFIELD"

DEVELOPMENT PLAN

MIDDLESEX COUNTY COUNCIL DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 10th December, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Urban Districts of Feltham, Hayes and Harlington, and Yiewsley and West Drayton. A certified copy of the proposals as submitted has been deposited for public inspection in the County Planning Department, No. 10 Great George Street, Westminster, S.W.1. Certified copies of the proposals have also been deposited for public inspection at the places mentioned below:—

Urban Districts and Place of Deposit

Feltham—Town Planning Department, Council Offices, Feltham.

Hayes and Harlington—Engineer & Surveyor's Department, Town Hall, Hayes.

Yiewsley and West Drayton—Drayton Hall, West Drayton.

The copies of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested in the places mentioned above between the hours of 10 a.m. and 4.30 p.m. on Mondays to Fridays and 9.30 a.m. and 12 noon on Saturdays (except in the case of the copy deposited in the County Planning Department which will not be open for inspection on Saturdays). Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st January, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Middlesex County Council, Guildhall, Westminster, S.W.1, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Court of Appeal

HUSBAND AND WIFE: ASSESSMENT OF DAMAGES PAYABLE BY CO-RESPONDENT: EVIDENCE AS TO CO-RESPONDENT'S MEANS

Scott *v.* Scott and Anyan

Denning, Hodson and Morris, L.JJ. 23rd November, 1956

Appeal from Judge R. S. Shove, sitting as commissioner in divorce at Lincoln.

A wife, who was a good business woman and helped her husband in the running of a profitable public house, committed adultery and left the home. The husband was obliged to give up the public house, losing a considerable income thereby. On his petition for the dissolution of his marriage, evidence was given as to the means of the co-respondent. The commissioner found that the wife had been the moving spirit in the adulterous association with the co-respondent and he awarded damages against the co-respondent. The co-respondent appealed against the quantum of damages.

DENNING, L.J., said that it was well settled that damages against a co-respondent were not to punish him for his wrong-doing, but were compensation to the husband for the loss of his wife, and where the wife was a good business woman, for the loss of her business capacity used in his interests. The judge in the present case had in all respects save one directed himself properly. His one error was based on the financial loss to the husband in which he had made an error in calculating the annual loss from the public-house, and on that ground the damages awarded should be reduced. It had also been said that the judge did not take into account sufficiently the co-respondent's means, and that such a large sum of money would exhaust the co-respondent's means. His lordship did not agree. As a matter of practical good sense, the general situation might be taken into account, but not specific figures. The appeal should be allowed to the extent only of the error on the face of the judgment.

HODSON, L.J., concurring, said that if the court or jury found in a given case that the co-respondent had used his wealth or rank or position to seduce the respondent, that might be taken into account as an element increasing the damages; but his lordship did not think that the converse of that proposition was true—namely, that where the judge or tribunal found that it was actually the wife who was the moving spitit in the liaison, the damages ought to be correspondingly reduced. If, as the judge found here, the co-respondent did not resist the temptation, he was justly to be described as causing the damage. As to whether the court would take into consideration the ability of the co-respondent to pay damages, the history of these actions (which went back to the action of criminal conversation) showed that the rank and fortune of the plaintiff or defendant, or petitioner and co-respondent, were material circumstances to be considered; but the authorities also showed (*Burne* v. *Burne and Helvoet* [1920] P. 17, 19) that although the general position was to be considered, the court would not receive evidence of the particular means or profits of the co-respondent. In this case, in so far as evidence was admitted (and his lordship did not think it ought to have been) as to his means, it did not show that he was unable to pay the sum which the judge awarded.

MORRIS, L.J., delivered a concurring judgment. Appeal allowed to the extent of the error on the face of the judgment.

APPEARANCES: *J. E. S. Simon*, Q.C., and *R. D. Lymbery* (*Field, Roscoe & Co.*, for *Burton and Dyson, Gainsborough*); *R. C. Vaughan*, Q.C., and *E. M. Ling Mallison* (*Henry Gover & Son* for *Anthony T. Clark*, Lincoln.)

[Reported by Miss M. M. HILL, Barrister-at-Law.] **[3 W.L.R. 1121**

LICENSOR AND LICENSEE: NEGLIGENCE: ACCESS TO EMPLOYERS' PREMISES CROSSED BY RAILWAY LINES: WARNING NOTICES: INJURY TO EMPLOYEE

Ashdown *v.* Samuel Williams & Sons, Ltd.

Singleton, Jenkins and Parker, L.JJ. 26th November, 1956

Appeal from Havers, J. ([1956] 2 Q.B. 580; *ante*, p. 420).

Industrial premises occupied by the second defendants were situate on part of a large dock estate leased from the first defendants, owners and in control of the dock estate. The premises were wholly surrounded by the dock estate, over part of which the second defendants' employees necessarily had to pass to obtain access to their place of work. One route was by a right of way demised to the second defendants by their lease for their use and for the use of their workpeople coming and going from their place of work. It led from the main road over a private road which was crossed at various points by railway lines and on which railway wagons were shunted from time to time. There was also a short cut, passing over property occupied by the first defendants and crossed by a number of railway lines, which the second defendants' employees had used for at least twenty years, with the knowledge of their employers, and with the knowledge of the first defendants who had never objected to such user. Notices were posted by the first defendants at various points over the estate. One in particular (notice "A") was posted on the private road, at a point where it was visible to those using the short cut. It was headed "Warning" and its terms were to the effect that the road was private property and that all persons using it were there at their own risk and should have no claim against the first defendants for any injury or damage caused to them, whether due to the first defendants' negligence or breach of duty. A further notice (notice "B"), posted nearby and visible to those using the right of way, was in similar terms, but specifically gave warning of engines and trucks standing on the railway lines. The plaintiff, an employee of the second defendants, used the short cut one morning to reach her place of work. While crossing a railway line and before reaching her destination she was knocked down and injured by railway trucks which were being shunted along the line. The plaintiff, in evidence, admitted that she had read the first few lines of notice "A" and could have read the rest of the notice. It was not disputed that the servants of the first defendants had been carrying out the shunting operations negligently. Havers, J., held that the plaintiff was bound by notices "A" and "B," and that the first defendants were absolved from liability, but that the second defendants had failed in their duty to take reasonable care in providing a safe way to go to work. The second defendants appealed; the plaintiff cross-appealed against the judgment in favour of the first defendants.

SINGLETON, L.J., said that no breach of duty had been proved against the employers. The plaintiff knew from the first time she went to the premises that there were rails to be crossed, and that shunting was carried on. A warning that it was more dangerous to go by the short cut would not have been any use to her. The appeal should be allowed. As to the cross-appeal, notice "B" was not relevant as it was not established that it had been brought sufficiently clearly to the plaintiff's notice. But the plaintiff had seen notice "A" and knew that she was on the premises at her own risk, and that shunting was carried on. She must be held to have entered on the premises as a licensee on the conditions stated in the notice, which were sufficiently brought to her attention. The notice referred to the "nature, condition and state" of the property "with everything thereon as he finds it"; that could not refer to a static condition only, when it was obvious that shunting would be going on. The notice was designed to relieve the occupiers from liability for negligence during such operations.

JENKINS and PARKER, L.JJ., agreed. Appeal allowed. Cross-appeal dismissed.

APPEARANCES: *Marven Everett, Q.C.*, and *G. R. F. Morris* (*Blount, Petre & Co.*); *R. F. Levy*, Q.C., and *N. McKinnon* (*Douglas Wiseman & Co.*, Barking); *M. Berryman*, Q.C., and *D. Croom-Johnson* (*Gardiner & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 1104**

JUSTICES: OFFENCE NOT PUNISHABLE BY IMPRISONMENT: POWER OF MAGISTRATE TO REMAND IN CUSTODY

Boaks *v.* Reece

Singleton, Jenkins and Parker, L.JJ. 27th November, 1956

Appeal from Pilcher, J., sitting with a jury ([1956] 1 W.L.R. 886; *ante*, p. 511).

The Magistrates' Courts Act, 1952, provides by s. 14 (3): "A magistrates' court may, for the purpose of enabling inquiries

to be made or of determining the most suitable method of dealing with the case, exercise its power to adjourn after convicting the accused and before sentencing him or otherwise dealing with him; but, if it does so, the adjournment shall not be for more than three weeks at a time." In October, 1955, the plaintiff was convicted by Mr. Bertram Reece at Bow Street Magistrates' Court of offences under ss. 6 and 72 of the Highway Act, 1835, and regs. 89 and 104 of the Motor Vehicles (Construction and Use) Regulations, 1955. Neither of the offences was punishable by a sentence of imprisonment. The plaintiff, who was conducting a road courtesy campaign, had a number of previous convictions for similar offences, some of them before the same magistrate, and he intimated that it was his intention to continue his campaign. Before passing sentence the magistrate remanded him in custody for seven days for a medical report. Pursuant to the magistrate's order the plaintiff was taken in custody to Brixton Prison where, despite his refusal to be medically examined, he was detained, under observation, from 3rd October to 10th October, 1955, in the prison hospital ward. The plaintiff claimed damages against the magistrate for wrongful imprisonment, alleging that he had been held in custody as a convicted person under s. 26 of the Criminal Justice Act, 1948, and s. 26 of the Magistrates' Courts Act, 1952, for offences none of which were punishable by imprisonment. By his defence the magistrate alleged that the order remanding the plaintiff in custody had been made pursuant to, and was authorised and rendered lawful by, ss. 14 (3) and (4) and 105 (1) (*a*) of the Magistrates' Courts Act, 1952. The jury found that the magistrate had not acted vindictively and had not, in remanding the plaintiff, mentioned any particular section of the Magistrates' Courts Act, 1952, and that the committal warrant signed by the magistrate had written on it "s. 14 (3)." Pilcher, J., entered judgment for the defendant, and the plaintiff appealed.

SINGLETON, L.J., said that it was clear that from s. 16 of the Summary Jurisdiction Act, 1848, and s. 25 (1) of the Criminal Justice Act, 1948, justices had, either before or after conviction, a right to adjourn a case to enable inquiries to be made to determine the most suitable way to deal with the case. Then came the Act of 1952, which was a consolidating Act. The magistrate had dealt with the plaintiff under s. 14 (3). The plaintiff had urged that the court owed a duty to the public to see that magisterial power was not abused, as it had been in the present case, by wrongfully depriving the plaintiff of his liberty. But s. 14 gave a magistrate certain powers of adjournment, and it was not to be assumed that he would not misuse a power to remand a person in custody up to three weeks. There were cases in which it was desirable, in the interests of the accused as well as of the public, that proper inquiries should be made, and if a magistrate came to the conclusion that the case was of that kind, and that inquiries should be made as to the best way of dealing with the case, and that it was his duty to order a remand, that was not the exercise of a "monstrous" power as the plaintiff had claimed, but of a power conferred by Parliament.

JENKINS and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: The plaintiff in person; *H. J. Phillimore*, Q.C., and *R. Winn* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 1126

LANDLORD AND TENANT ACT, 1954: BUSINESS PREMISES: RELEVANT TIME OF INTENTION TO RECONSTRUCT

Betty's Cafes, Ltd. *v.* Phillips Furnishing Stores, Ltd.

Lord Evershed, M.R., Birkett and Romer, L.JJ.

28th November, 1956

Appeal from Danckwerts, J. ([1956] 1 W.L.R. 678; *ante*, p. 435).

Under a series of leases, none of which granted a term exceeding eight years, the tenants had, since 1925, carried on their business in premises in Bradford. The landlord company had, in 1954, purchased the reversion expectant on the tenants' term with a view to occupying the premises for their own business. On 28th June, 1955, the tenants served a notice under s. 26 of the Landlord and Tenant Act, 1954, asking for the grant of a new tenancy for a term of fourteen years. On 15th August, 1955, the landlords gave notice to the tenants that they would oppose the grant of a new tenancy under s. 30 (1) (*f*) of the Act of 1954 on the ground that on the termination of the tenancy they intended to reconstruct the premises. Before the service of the landlords' notice the landlords' architect had prepared plans for a scheme of reconstruction with an appropriate estimate of its cost. No resolution of the board of the company had been passed adopting the scheme before the service of the landlords' notice nor had such a resolution been passed before the beginning of the hearing by Danckwerts, J., on 16th April, of the tenants' application. On 23rd April, before the hearing was completed, the board of the landlord company met and passed a resolution that, in the event of the landlords obtaining possession, the works in question would be carried out, expenditure up to £20,000 on such works being approved, and counsel for the landlords was authorised to give an undertaking to the court to that effect. Danckwerts, J., held that the landlords' proposal amounted to a substantial reconstruction of the demised premises and possession was necessary for the purpose of effecting the reconstruction, and that this condition of para. (*f*) of s. 30 (1) had been satisfied. He held, however, that the landlords had failed to prove the necessary firm and settled intention to carry out the works at the relevant time, which was the date of the service of the landlords' notice of opposition to the grant of a new tenancy, and, accordingly, that the tenants were entitled to be granted a new tenancy. This he granted for the maximum period of fourteen years allowed by the Act. The landlords appealed.

BIRKETT, L.J., delivering the first judgment, said that the precise point as to what was the relevant date for the requisite intention to reconstruct premises had never been judicially determined, though in *Reohorn* v. *Barry Corporation* [1956] 1 W.L.R. 845; *ante*, p. 509, Denning, L.J., expressed the view that it was the date of the hearing; but that case did not raise the point, and in it Parker, L.J., reserved the point. In the present case Danckwerts, J., had been much influenced by some observations of Lord Evershed, M.R., in *XL Fisheries, Ltd.* v. *Leeds Corporation* [1955] 2 Q.B. 636; but the point in that case was not the point in the present appeal, and it was therefore true to say that there was no authority which bound the Court of Appeal on the question as to what was the relevant date. In his lordship's opinion the proper date was the date of the hearing before the court, when the landlord had to establish the ground stated in his notice to the satisfaction of the court. The court was given a discretion under (*a*), (*b*) and (*c*) of the section to decide whether the tenant ought to be granted a new tenancy and that discretion must be exercised on the material before the court at the date of the hearing; and with regard to (*d*), (*e*) and (*f*) of the section, the court must decide on the material then before the court at the hearing, and not on what was the position at the date of the notice, though the whole history of the matter must be considered when deciding whether the requisite intention had been satisfactorily established. In the vast majority of cases, of course, the position at the date of the notice and at the date of the hearing would be exactly the same. The landlord was unlikely to put into his notice any ground upon which he had no intention of relying; but, in view of the imperative duty to state his grounds, the landlord might very well put in his notice a ground about which he had not fully made up his mind at the date of the notice, because the decision rested on facts which had still to be made clear. If at the date of the notice the intention required by para. (*f*) could not be said to be a firm and settled intention because of special circumstances, but at the date of the hearing the intention required by law was established to the satisfaction of the court, the tenant's application would be defeated. Accordingly, the case should go back to Danckwerts, J., for further consideration on the footing that the resolution of the board was not too late for it to receive consideration. If a new tenancy were granted it should, in his lordship's opinion, be for five years.

ROMER, L.J., delivered a concurring judgment.

LORD EVERSHED, M.R., dissenting, said that he agreed with Danckwerts, J., that the "relevant date" was the date of the landlord's notice under s. 26 (6) of the Act. Alternatively, it was the date on which the landlord must state, in proceedings instituted by the tenant, whether he did or did not oppose the relief which the tenant sought. The proposition that a landlord could form the requisite intention at any time before judgment was given in the High Court or the county court was irrational, and stultified the elaborate machinery otherwise provided by this Act, and ought, accordingly, to be rejected. Appeal allowed.

APPEARANCES: *J. P. Widgery* (*Clifford-Turner & Co.*); *Lionel Blundell* and *C. B. Priday* (*Ward, Bowie & Co.*, for *Booth & Co.*, Leeds).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [3 W.L.R. 1134

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Licensing (Amendment) Bill [H.L.] [13th December.

To amend the law relating to the registration of clubs and to provide for matters connected therewith.

Read Third Time :—

Air Corporations Bill [H.C.] [11th December.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

Ghana Independence Bill [H.C.] [11th December.

Read Third Time :—

Hydrocarbon Oil Duties (Temporary Increase) Bill [H.C.] [13th December.

B. Questions

Hire-Purchase Deposits

Mr. Thorneycroft said that he proposed to lay before Parliament shortly orders dealing with loans made by arrangement with the dealer for the payment of hire-purchase deposits and advance rentals. [11th December.

Certification While Undergoing Sentence

Major Lloyd-George undertook to consider such cases as (1) that of a man sentenced to a short term of imprisonment who was certified in prison by doctors who saw him there and at the expiration of his sentence detained indefinitely merely on a justice's certificate, and (2) those of juvenile delinquents certified under the Mental Deficiency Acts whilst inmates of remand homes and Borstal institutions, without legal representation or independent medical examination, and then detained for many years. [13th December.

Trial (Transcript of Proceedings)

Asked whether the Home Office would provide a transcript of the trial of Ben Canter and Police Sergeant Robertson for the use of Joseph Grech, who was seeking a retrial of his case, Major Lloyd-George said that Grech's solicitor had asked for the transcript on two occasions without giving any indication of what he wanted it for. The considerable expense of obtaining the transcript, about £200, could not be incurred in order to lend it to a person for his private purposes, but as soon as the solicitor said that he wanted it for the purpose of preparing a petition it was given. [13th December.

STATUTORY INSTRUMENTS

Coal and Other Mines (Height of Travelling Roads) Regulations, 1956. (S.I. 1956 No. 1940.) 5d.

Coal and Other Mines (Transport Roads) Regulations, 1956. (S.I. 1956 No. 1941.) 5d.

Coal Mines (Cardrox and Hydrox) Regulations, 1956. (S.I. 1956 No. 1942.) 7d.

Electricity Supply (Hours, Safety and Welfare) (Revocation) Order, 1956. (S.I. 1956 No. 1958.)

Federated Superannuation System for Universities (Pensions Increase) Regulations, 1956. (S.I. 1956 No. 1938.) 5d.

Importation of Carnation Cuttings (Scotland) Order, 1956. (S.I. 1956 No. 1924 (S.88).) 5d.

Imprisonment and Detention (Army) Rules, 1956. (S.I. 1956 No. 1914.) 2s. 2d.

London Traffic (Prescribed Routes) (Dartford) Regulations, 1956. (S.I. 1956 No. 1933).

London Traffic (Prohibition of Waiting) (Dartford) Regulations, 1956. (S.I. 1956 No. 1934.) 5d.

Nature Conservancy (Byelaws) (Scotland) Regulations, 1956. (S.I. 1956 No. 1905 (S.87).) 5d.

New Forest (Confirmation of Byelaw) Order, 1956. (S.I. 1956 No. 1935.) 5d.

Police (No. 3) Regulations, 1956. (S.I. 1956 No. 1944.)

Road Traffic Act, 1956 (Commencement No. 2) Order, 1956. (S.I. 1956 No. 1937 (C.16).) 5d.

Road Vehicles Lighting (Special Exemption) Regulations, 1956. (S.I. 1956 No. 1959.) 5d.

Stopping up of Highways (Bedfordshire) (No. 15) Order, 1956. (S.I. 1956 No. 1929.) 5d.

Stopping up of Highways (Birmingham) (No. 6) Order, 1956. (S.I. 1956 No. 1910.) 5d.

Stopping up of Highways (Buckinghamshire) (No. 11) Order, 1956. (S.I. 1956 No. 1917.) 5d.

Stopping up of Highways (Coventry) (No. 7) Order, 1956. (S.I. 1956 No. 1927.) 5d.

Stopping up of Highways (East Sussex) (No. 5) Order, 1956. (S.I. 1956 No. 1936.) 5d.

Stopping up of Highways (Glamorganshire) (No. 2) Order, 1956. (S.I. 1956 No. 1930.) 5d.

Stopping up of Highways (Gloucestershire) (No. 20) Order, 1956. (S.I. 1956 No. 1908.) 5d.

Stopping up of Highways (Lancashire) (No. 17) Order, 1956. (S.I. 1956 No. 1911). 5d.

Stopping up of Highways (London) (No. 46) Order, 1956. (S.I. 1956 No. 1918.) 5d.

Stopping up of Highways (London) (No. 49) Order, 1956. (S.I. 1956 No. 1919.) 5d.

Stopping up of Highways (London) (No. 50) Order, 1956. (S.I. 1956 No. 1912.) 5d.

Stopping up of Highways (London) (No. 51) Order, 1956. S.I. 1956. No. 1920.) 5d.

Stopping up of Highways (Northamptonshire) (No. 10) Order, 1956. (S.I. 1956 No. 1931.) 5d.

Stopping up of Highways (Sheffield) (No. 2) Order, 1956. (S.I. 1956 No. 1913.) 5d.

Stopping up of Highways (Sheffield) (No. 7) Order, 1956. (S.I. 1956 No. 1928.) 5d.

Stopping up of Highways (Warwickshire) (No. 8) Order, 1956. (S.I. 1956 No. 1909.) 5d.

Stopping up of Highways (Warwickshire) (No. 16) Order, 1956. (S.I. 1956 No. 1926.) 5d.

Stopping up of Highways (West Ham) (No. 2) Order, 1956. (S.I. 1956 No. 1932). 5d.

Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations, 1956. (S.I. 1956 No. 1943.) 11d.

Draft **Teachers** (Superannuation) (Scotland) Regulations, 1956. 2s. 2d.

Wages Regulation (Shirtmaking) (Amendment) Order, 1956 (S.49). (S.I. 1956 No. 1946.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

PRACTICE DIRECTION

THE GUARDIANSHIP OF INFANTS ACTS, 1886 AND 1925

Appeals to the Assigned Judge of the Chancery Division

In cases in which applications under the above Acts have been made with regard to two or more infant children of the same parents, and such applications have been heard together or have been heard on the same day and by the same Tribunal, one originating notice of motion only under r. 6 of Ord. 55A of the Rules of the Supreme Court is to be issued by way of appeal, whether or not separate orders in respect of each infant have been drawn up by the court below. The originating notice of motion should, if necessary, refer in separate paragraphs to the order made with regard to each infant.

By direction of Mr. Justice Roxburgh.

W. S. JONES,
Chief Registrar,
Chancery Division.

7th December 1956.

NOTES AND NEWS

Honours and Appointments

Mr. R. S. HAWKINS, solicitor, has been appointed Clerk of the Peace for Poole in succession to the late Mr. Wilson Kenyon.

Mr. ROBERT BOYD COCHRANE PARNALL has been appointed deputy chairman of the Court of Quarter Sessions for the County of Monmouth.

Miscellaneous

DEVELOPMENT PLANS

[*See also p.* 944, *ante*]

COUNTY BOROUGH OF SOUTHAMPTON DEVELOPMENT PLAN

On 29th November, 1956, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at Room 329, in the Borough Architect's Department, at the Civic Centre, Southampton. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on weekdays, except Saturdays, when it will be available for inspection between the hours of 9 a.m. and noon. The plan became operative as from 10th December, 1956, but, if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 10th December, 1956, make application to the High Court.

LANCASHIRE COUNTY COUNCIL DEVELOPMENT PLAN, 1951

On 6th July, 1956, the Minister of Housing and Local Government approved (with modifications) the above development plan. Certified copies of the plan as approved by the Minister have been deposited at: (1) the County Planning Office, East Cliff County Offices, Preston, and (2) the Divisional Planning Offices at: (*a*) Midland Bank Chambers, Birch Street, Accrington; (*b*) 162 North Promenade, Blackpool; (*c*) Bank Street Chambers, Bury; (*d*) 4 Queen Street, Lancaster; (*e*) 19 Old Hall Street, Liverpool; (*f*) 50 Mosley Street, Manchester; (*g*) Cross Street, Ulverston; (*h*) 18 Bridgeman Terrace, Wigan. The copies of the plan so deposited will be open for inspection, free of charge, by all persons interested, between the hours of 9 a.m. and 5 p.m. Mondays to Fridays inclusive and 9 a.m. and 12 noon on Saturday. The plan became operative as from 11th December, 1956, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 11th December, 1956, make application to the High Court.

NOTE.—Arrangements have also been made with the County District Councils for extracts from the plan so far as it relates to their districts to be available for inspection at their respective offices during their usual office hours.

"LAW QUARTERLY REVIEW"

The publishers of the *Law Quarterly Review* held a reception on 12th December in the Old Hall, Lincoln's Inn, in honour of Professor A. L. GOODHART, Q.C., to mark his completion of thirty years as editor. Among those present were: Viscount Simonds, the Lord Chief Justice, Lord Radcliffe, Lord Cohen, the Master of the Rolls, Lord Justice Singleton, Lord Justice Denning, Lord Justice Birkett, Lord Justice Hodson, Lord Justice Romer, Mr. Justice Hilbery, Mr. Justice Vaisey, Mr. Justice Harman, Mr. Justice Willmer, Mr. Justice Wynn Parry, Mr. Justice Slade, Mr. Justice Devlin, Mr. Justice Danckwerts, Mr. Justice Ashworth, Lord Chorley, the Treasurer of Lincoln's Inn, Sir Sidney Abrahams, Sir Carleton Allen, Sir William Ball, Sir David Scott Cairns, Sir George Coldstream, Sir George Curtis, Sir Francis Enever, Sir Reginald Hills, Sir Thomas Kendrick, Sir David Hughes Parry, Professor H. A. Hollond, and the assistant editor of the *Law Quarterly Review* (Mr. R. E. Megarry).

CHANGE OF ADDRESS

On and after 21st January, 1957, the Taxing Office in Bankruptcy of the High Court of Justice will be at Room 261, Royal Courts of Justice, London, W.C.2.

WINFRITH HEATH ATOMIC RESEARCH PROJECT: PLANNING INQUIRY TO BE HELD

The Minister of Housing and Local Government has directed Dorset County Council to refer to him for decision the application made by the United Kingdom Atomic Energy Authority for planning permission for their projected research establishment at Winfrith Heath. A local inquiry will be held early in January.

ASSOCIATION OF LIBERAL LAWYERS

The Association of Liberal Lawyers, at a recent meeting in the House of Commons with the Parliamentary Liberal Party, agreed in principle on the setting up of an Administrative Court of Appeal, subject to greater detail being discussed at a later date. It is part of the purposes of the Association to advise the Parliamentary Party on legislative matters. A sub-committee under the chairmanship of Mr. J. Montgomerie has already reported on the new Rent Bill.

A further purpose of the Association is to draw the attention of the Liberal Party to matters requiring remedial legislation and to the issuing of reports on such matters.

At the Michaelmas Business Meeting, The Rt. Hon. Clement Davies, Q.C., M.P., was elected President of the Association. The Executive Committee meets under the chairmanship of Sir Arthur Comyns Carr, Q.C.

All lawyers (including Bar students, articled clerks, university undergraduates and other approved law students) interested in the work of the Association and who desire to become members are cordially invited to write for details of membership to the Hon. Secretary, T. Cedric Jones, c/o National Liberal Club, London, S.W.1.

Wills and Bequests

Mr. E. J. Grist, solicitor, of Chalford, Gloucestershire, left £34,027 net.

SOCIETIES

The annual dinner of the BIRMINGHAM LAW STUDENTS' SOCIETY was held on 7th December, when the vice-president, Judge A. H. Forbes, presided, in the absence of Sir Hartley Shawcross, president. Mr. A. L. d'Abreu, Reader in Thoracic Surgery at Birmingham University, proposed the toast "The Bench and the Bar" and among the other speakers were Mr. Justice Finnemore, Mr. R. E. Megarry, Q.C., Mr. A. C. Weir, secretary of the society, and Mr. E. J. Dodd, Chief Constable of Birmingham.

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